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2 Teleconference

3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF NEW YORK

5 -----x
6 UNITED STATES OF AMERICA,

7 New York, N.Y.

8 v.

9 20 Cr. 0500 (JGK)

10 SAMUEL REED,

11 Defendant.

12 -----x

13 October 15, 2020
14 3:30 p.m.

15 Before:

16 HON. JOHN G. KOELTL,

17 District Judge

18 APPEARANCES (via telephone)

19 AUDREY STRAUSS

20 Acting United States Attorney for the
21 Southern District of New York

22 BY: SAMUEL RAYMOND

23 JESSICA GREENWOOD

24 Assistant United States Attorneys

25 LATHAM & WATKINS LLP

Attorneys for Defendant

BY: DOUGLAS KENT YATTER

BENJAMIN NAFTALIS

JACK McNEILY

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(Teleconference initiated)

THE CLERK: United States of America versus Samuel Reed.

All parties, please state who they are for the record.

MR. RAYMOND: Good afternoon, your Honor. This is A.U.S.A. Sam Raymond joined by my colleague A.U.S.A. Jessica Greenwood for the government.

MR. YATTER: Good afternoon, your Honor. This is Douglas Yatter, of Latham & Watkins, joined by my partner Benjamin Naftalis and our colleague Jack McNeily on behalf of Mr. Reed.

THE COURT: All right. This is Judge Koeltl.

We're on a telephone conference now. There is no video. I would have the conference in court or by video if the parties wished. I'm doing it by telephone only because my understanding is that the parties wanted to appear by telephone.

Is the defendant also on the line?

MR. YATTER: He is, your Honor. Mr. Reed is here with us on the phone.

THE COURT: OK. So, if the defendant wanted to have this conference in court in person or, as an alternative, by video hookup, I would do that.

Does the defendant waive his physical presence for purposes of this conference?

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1 MR. YATTER: He does, your Honor.

2 THE COURT: OK. I believe -- and if anyone talks,
3 they should say who they are so that the court reporter
4 properly gets the attributions.

5 Was that Mr. Yatter?

6 MR. YATTER: It is, your Honor. Yes. Everything said
7 so far for Mr. Reed was by me.

8 THE COURT: OK. We also have a form for the defendant
9 to waive his physical presence at a conference, and defense
10 counsel should see that that waiver is signed and filed.

11 Mr. Fletcher can provide you a copy of it.

12 I take it that hasn't yet been signed and filed, am I
13 right?

14 MR. YATTER: Your Honor, we did execute one in advance
15 of the initial appearance before Magistrate Judge Cave earlier
16 this week.

17 THE COURT: Does that apply to this conference also?

18 MR. YATTER: I believe it is written broadly enough to
19 do so, but I would have to check that, your Honor. We're happy
20 to look at that, and if a new one is needed, we're happy to put
21 that on file.

22 THE COURT: OK. Great.

23 As another initial matter, I should point out that I
24 know Mr. Naftalis. Nothing about that affects anything that I
25 do in the case.

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I should also point out that my niece is a partner in Latham & Watkins, but she doesn't work on any cases where I am the judge and she doesn't receive any income from any cases on which I am the judge, and nothing about that affects anything that I do in the case. But I bring those matters to your attention at the outset.

All right. So, Mr. Raymond, tell me about the case and where we are.

MR. RAYMOND: Yes, your Honor. This is A.U.S.A. Raymond, to be clear.

THE COURT: I can't -- whoa, whoa, whoa, whoa. Your connection is not very good for me. I don't know how good it is for the court reporter.

MR. RAYMOND: Can you hear me better now, your Honor, and the court reporter?

THE COURT: I hear you somewhat better.

court reporter?

THE REPORTER: Yes, your Honor. He is a little bit better now.

THE COURT: OK. OK. Somewhat better for me, too.

MR. RAYMOND: OK. Your Honor, I'm holding the phone to my ear so I hope there are no other issues, but please let me know if you can't hear me.

THE COURT: OK. Go ahead.

MR. RAYMOND: Thank you.

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1 This is a case, as the indictment makes clear, about
2 BitMEX, which is a company operated by, among others --

3 THE REPORTER: Mr. Raymond, I'm sorry. This is the
4 court reporter. Mr. Raymond, you are too fuzzy. I wasn't
5 making that out. You have to go, because of your connection,
6 really slowly. I'm sorry.

7 THE COURT: I'm sorry. What kind of phone are you
8 using?

9 MR. RAYMOND: I'm using an iPhone.

10 THE COURT: You don't have a regular -- OK. Go
11 slowly, please.

12 MR. RAYMOND: Yes. Thank you. your Honor. And
13 apologies for the bad connection.

14 This is a case about FitMEX, which is a financial
15 institution, which was operated by the defendant and his
16 codefendants, that has been -- the defendant and his
17 codefendants have been violating and conspiring to violate the
18 Bank Secrecy Act since in or about September 2015.

19 They did so -- excuse me, your honor.

20 THE COURT: No. I was just going to say, go ahead.

21 MR. RAYMOND: Thank you.

22 They did so by failing to implement -- by willfully
23 failing to implement anti-money laundering and know your
24 customer programs, which would allow them to properly identify
25 their customers, and they did so while serving U.S. customers

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1 and operating in the United States.

2 As to this specific defendant, he earned millions of
3 dollars from his ownership and operation of BitMEX, and he and
4 his codefendants worked together to try to deceive regulators
5 by claiming not to serve the U.S. market while in fact doing
6 so.

7 And, just finally, as alleged in the indictment, when
8 the CFTC began to investigate BitMEX in late 2018, Mr. Reed was
9 deposed in January 2019. He falsely denied knowing that BitMEX
10 maintained reports where it identified the presence of U.S.
11 customers on its platform despite the fact that just a month
12 earlier he had received such a report.

13 THE COURT: All right. What is the status of the
14 other defendants?

15 MR. RAYMOND: Your Honor, no other defendant has been
16 arrested in this case. They are currently -- they remain at
17 large in other jurisdictions, and we cannot predict the
18 timeline for any appearance.

19 THE COURT: And what is the status of Mr. Reed? He
20 was -- am I correct, he was arraigned on the indictment before
21 the Magistrate Judge and so had his initial appearance before
22 the Magistrate Judge and was warned of all of his rights?

23 MR. RAYMOND: Your Honor, I'm going to turn over that
24 question to A.U.S.A. Greenwood, who handled that presentment.

25 MS. GREENWOOD: Hi, your Honor. This is A.U.S.A.

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1 Jessica Greenwood.

2 Yes, you are correct. Mr. Reed had his initial
3 presentment and arraignment in magistrate's court on Tuesday,
4 the 13th of this week, in front of Judge Cave. Following -- he
5 was arrested out of district and had initially had an
6 appearance in Massachusetts but has now appeared remotely in
7 this district. And Judge Cave excluded time from the speedy
8 trial clock from that initial appearance and arraignment on
9 Tuesday through today's conference.

10 THE COURT: OK. Thank you.

11 What is the status of discovery?

12 MS. GREENWOOD: This is A.U.S.A. Greenwood again.

13 So we have not yet begun discovery, but we had a
14 conference with defense counsel shortly before today's
15 conference to talk them through the general categories of
16 discovery, which I'm also happy to walk the Court through in
17 terms of what is anticipated, and so we will begin discovery
18 shortly. And, as I said, I'm happy to walk the Court through
19 what we expect to produce.

20 THE COURT: Yes. Please.

21 MS. GREENWOOD: So, by and large, the government's
22 discovery will consist of documents produced by BitMEX, by the
23 company as part of the investigation. So the vast majority of
24 documents we'll be producing will be from the company that
25 Mr. Reed founded and co-ran during the relevant time period.

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We also have document productions from third parties.

There is one search warrant that implicates an account used by Mr. Reed which is a Reddit account, a social media website messaging platform. We have additional search warrant returns for other electronic accounts and devices belonging to individuals other than Mr. Reed. We also expect to produce some limited data in response to other Court orders. There was a GPS location warrant on Mr. Reed's cell phone for less than a day's worth of data prior to his arrest.

There were a couple of pen register orders for information on a Twitter account and a couple of WhatsApp accounts belonging to third parties other than Mr. Reed. And then there will be some materials relevant to a government undercover investigation involving use of the BitMEX platform.

So, broadly, that's sort of the nature of the discovery that we expect to produce. Mr. Reed did not make a post-arrest statement, and there were no other searches of Reed's devices or promises.

THE COURT: What's the volume of the discovery?

MS. GREENWOOD: With respect to the documents from the company, your Honor, it's in the neighborhood of a little in excess of 100,000 documents. I think it is about 107,000 documents from last I checked. There are at least another 50,000 or so documents from third parties and a smaller number that we're still compiling, and that would include third-party

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1 document productions as well as things like search warrant
2 returns.

3 THE COURT: OK. And what's the timeline to make all
4 of the productions?

5 MS. GREENWOOD: We can begin making productions
6 immediately, but we think it will take on the outer edge two
7 months to complete discovery.

8 THE COURT: OK.

9 MS. GREENWOOD: And one other issue, just to mention
10 about discovery, your Honor.

11 THE COURT: Of course.

12 MS. GREENWOOD: And we had conferred with defense to
13 let them know we'll be seeking a protective order to protect at
14 least some of the materials we plan to produce from disclosure.
15 We hope to reach consent with defense counsel on that
16 protective order, and we'll be discussing a draft with them
17 after today's conference.

18 THE COURT: OK. So, to confirm, no time off the
19 speedy trial clock at this point?

20 MS. GREENWOOD: That's correct, your Honor.

21 THE COURT: What is your estimate with respect to the
22 length of time for trial?

23 MS. GREENWOOD: It will depend, I guess, somewhat on
24 whether or not there are additional defendants who appear
25 between now and then, but I think, assuming it is Mr. Reed and

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3 perhaps one or two others, I think at least a three- to
4 four-week trial would be, I think, a reasonable estimate.

5 THE COURT: OK. Did you mark this as a Wheel A case,
6 or, I'm sorry --

7 MS. GREENWOOD: We did not, your Honor.

8 THE COURT: What did you mark it as, a wheel which?

9 MS. GREENWOOD: We marked it as a Wheel C case.

10 THE COURT: Wheel C, OK. Thanks.

11 OK. What I would normally do is since the government
12 estimates it will take about two months to make discovery, that
13 would take us to the beginning of December. I would set it
14 down for another conference perhaps the beginning of February,
15 at which time the defendant can tell me what motions, if any,
16 the defendant intends to make, how much time it will take the
defendants, and I would, depending on the schedule, set the
time for motions and trial at that point.

17 So, that would take us to the beginning of February
18 for another conference, unless the defendant has other thoughts
19 about an appropriate schedule or the government. So, is there
20 anything that the defendant would like to tell me?

21 MR. YATTER: Thank you, your Honor. This is
22 Mr. Yatter.

23 The approach you've outlined sounds pretty much
24 reasonable to us, so no objection to proceeding on that
25 timeline. We look forward to working with the government to

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3 get the material that they have described.

4 THE COURT: OK. Mr. Fletcher, can we get a date
5 towards the beginning of February?

6 THE CLERK: Tuesday, February 9, 2021, at 11:30 a.m.

7 THE COURT: Is that convenient for everyone?

8 MR. YATTER: Your Honor, I apologize, I couldn't hear
9 the date that was said.

10 THE COURT: Sure. February 9 at 11:30 a.m.

11 MS. GREENWOOD: That works for the government, your
12 Honor.

13 THE COURT: And the defense?

14 MR. YATTER: It looks fine on this end as well, your
15 Honor.

16 THE COURT: OK. Another conference February 9 at
17 11:30 a.m.

18 I will exclude prospectively the time from today until
19 February 9, 2021 from Speedy Trial Act calculations. The
20 continuance is designed to assure effective assistance of
21 counsel. It's required because of the complexity of the case
22 and the volume of discovery. It's required in order to allow
23 the defense to determine what motions, if any, the defendant
24 intends to make. The Court finds that the ends of justice
25 served by ordering the continuance outweigh the best interests
of the defendant and the public in a speedy trial. This order
of exclusion is made pursuant to the 18 U.S.C. Section

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3 3161(h)(7)(A).

4 OK. Anything else?

5 MR. RAYMOND: Yes, your Honor. This is A.U.S.A.
6 Raymond again.

7 I want to -- the government respectfully moves the
8 Court to revisit one of the bail conditions. The defense wrote
9 to the Court on Tuesday seeking to modify two conditions of the
10 defendant's bail that had been set in Massachusetts and --

11 THE COURT: Right.

12 MR. RAYMOND: And that was, as the defense said at the
13 time, with the government's consent. The government has since
14 learned with respect to the condition about the defendant not
15 contacting and communicating with his codefendants except in
16 the presence of counsel. The government has since learned,
17 according to a public filing by the company, that Mr. Reed, as
18 well as his codefendants, have stepped back from executive
19 management responsibilities and are no longer officers of
20 BitMEX. This was a blog post posted on October 8th by BitMEX.

21 So, the government would respectfully -- the
22 government did not seek this condition initially and then
23 consented to its removal, but the government respectfully moves
24 that given the changed circumstance of Mr. Reed's employment on
25 an ongoing basis at BitMEX, as well as his codefendants, that
the no-contact condition be reapplied, given the changed
circumstances around his employment.

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1 THE COURT: All right. Defense.

2 MR. YATTER: Yes, your Honor.

3 We oppose the request to reopen that condition. I
4 think the reasons for it are already embedded in Mr. Raymond's
5 description of the issue. This restriction was not one that
6 the government thought when we negotiated the terms of Mr.
7 Reed's release. It was not part of the agreed bail package.
8 It emerged through the proceedings in Boston, and then we
9 promptly raised it with them afterwards as one of the things
10 that has no basis and is not necessary and should be removed.

11 The government consented to that. As Mr. Raymond
12 noted, we submitted the letter to the Court earlier this week,
13 I believe it was on the 13th. The blog post that Mr. Raymond
14 is referring to was published on October 8th, several days
15 before our letter noting the government's consent.

16 And on the substance of it, we would just note that
17 there is no basis, apparent or needed, for that kind of a
18 restriction on Mr. Reed or his codefendants. As the blog post
19 reported, he and others have stepped back from their executive
20 management roles, but Mr. Reed remains a director and there
21 are -- there may be needs for them to speak and discuss in that
22 context the business that they founded and for which Mr. Reed
23 and others are directors.

24 THE COURT: Government?

25 MR. RAYMOND: Your Honor, just in terms of the timing,

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1 the government hadn't seen the blog post when it consented
2 despite the fact that it was -- might have been posted on
3 October 8th. So that's, first of all, addressing the timing.

4 In terms of the underlying merits, your Honor, the
5 government would respectfully submit, given the fact of
6 Mr. Reed's actual obstruction in this case as alleged in the
7 indictment in paragraph 27, the fact his codefendants are at
8 large and have -- while the government is seeking a protective
9 order, the government's concerned that the purpose of that
10 protective order might be undermined if Mr. Reed were to have
11 discussions with his codefendants uncounseled. And while
12 Mr. Reed still has some -- might still have some need to
13 communicate about business matters, it isn't the same level of
14 ongoing business that he did before this announcement was made
15 by the company.

16 So, given that, your Honor, the government
17 respectfully submits that there is a valid basis. And I
18 understand this was also a recommendation by Pretrial in New
19 York for a no-contact order between the defendant and his
20 codefendants without counsel. They can still have joint
21 defense conversations, of course, with counsel.

22 THE COURT: Anything the defense wants to add?

23 MR. YATTER: Yes, your Honor, just to respond to that.

24 Mr. Reed remains on the Board of Directors as do the
25 others, and they need to be able to hold meetings and have

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1 board-level discussions.

2 Mr. Raymond's concern about the protective order is
3 addressed by the protective order. That's the vehicle for
4 addressing those concerns, not an unnecessary restriction on
5 contact between these individuals. And, obviously, we would
6 strongly disagree with Mr. Raymond's characterization and note
7 that those are just allegations, not more.

8 THE COURT: OK. Several of the arguments that have
9 been made with respect to the no-contact condition are really
10 beside the point. Whether the government originally consented
11 is not terribly relevant. The government no longer consents.

12 The issue is whether there is a sufficient showing for
13 this particular condition. Whether the government saw the blog
14 post or should have seen the blog post before it agreed to the
15 condition -- or agreed to eliminate the condition is also
16 beside the point. The issue is whether the condition is
17 justified or not. I could impose a brand new condition, and
18 what the parties had previously argued or consented to would be
19 beside the point. The issue is, is there a basis for this
20 particular conclusion.

21 The government says it agreed to the condition
22 initially based on the understanding that the defendant needed
23 to contact and speak with his codefendants because they were
24 all executive officers of the company. Now, it's represented
25 that they are no longer executives of the company but they are

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3 directors of the company. How often they would have to
4 communicate with respect to being directors of the company is
5 certainly something that hasn't been developed. Whether they
6 get reports as directors and show up once every four months or
7 so for a Board of Directors' meeting and that's it would make a
difference. Whether they need ongoing contact because they are
directors is something that's really not developed.

8 It obviously is an imposition not to talk to other
9 directors, but what the burden of that imposition is is
10 unclear. The defendant would have an interest in not placing
11 himself in a position where it could be said that he was
12 involved in some form of obstruction through contacts with his
13 codefendants, and certainly defense counsel would have an
14 interest in avoiding even the appearance of obstruction, which
15 certainly could be obviated by a clear condition that the
16 defendant not talk to his codefendants except in the presence
17 of counsel. All of those are considerations which really
18 haven't been fleshed out for me in the course of the discussion
19 before me. And a little consideration of what the merits of
20 the condition are and what the benefits of the condition are to
21 the defendant would be useful.

22 My bottom line is that the parties, through this
23 application, haven't given me sufficient information to be able
24 to determine whether the reimposition of the condition is one
25 that's warranted. So, I'm not going to change the condition,

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3 which has now been eliminated, with the government's consent,
4 but the government says they weren't aware of the change in
5 circumstances. I am open to an application by the government
6 to impose the condition if in fact after further discussions
7 between the government and the defense there really is an issue
8 as to whether the condition should be reimposed or not
9 reimposed and why and whether there is a sufficient basis and
10 whether the defense really contests the condition. As I have
11 said, on reflection, it may well appear to be the better course
12 to the defense that the defendant not have consultations with
13 his codefendants solely because they are directors of the
14 company except in the presence of counsel, but I'm not going to
15 decide that until I have an application and a response.

16 So, if the government wants to reimpose the condition
17 after discussing this with the defense and there is opposition,
18 the government can write me a letter, the defense can object.
19 And if the parties have any narrower suggestions for me, they
20 can put it in writing and I'll decide whether to reimpose the
21 condition.

22 MR. RAYMOND: Thank you very much, your Honor.

23 MR. YATTER: Thank you, your Honor.

24 THE COURT: OK. Sure. Anything else?

25 MR. RAYMOND: Nothing further from the government.

Thank you.

THE COURT: I'll see you all hopefully in person

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3 February 9th at 11:30 a.m. If there are any developments in
4 addition to the bail condition and the protective order, you
5 are welcome to ask for another conference before then. Just
6 send me a letter.

7 OK. Good to talk to you all.

8 Anything further?

9 (Pause)

10 MR. YATTER: Thank you, your Honor.

11 MR. RAYMOND: Nothing on this end, your Honor. Thank
12 you.

13 THE COURT: OK. Bye now.

14 (Adjourned)

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